

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8984 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

DWARKADAS GOVINDDAS PARIKH

Versus

STATE OF GUJARAT

Appearance:

Shri P.M. Bhatt, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/08/96

ORAL JUDGEMENT

The show-cause notice issued by and on behalf of
the State Government (respondent No. 1 herein) on 20th
April 1995 together with the order of interim direction
issued on the same day in purported exercise of powers
under sec. 34 of the Urban Land (Ceiling and Regulation)

Act, 1976 (the Act for brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India. By the impugned direction, the petitioner is directed to maintain status quo with respect to the subject-matter of this petition.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It was duly processed by the Competent Authority at Ahmedabad (respondent No. 3 herein). After observing necessary formalities under sec. 8 thereof, by his order passed on 15th February 1993 and communicated on 4th March 1993, respondent No. 3 declared the holding of the petitioner to be in excess of the ceiling limit by 14698 square meters. In view of the pendency of the application under sec. 20(1) of the Act, the proceedings were ordered to be carried till the stage of sec. 10(1) thereof. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-136 of 1993. By the order passed on 6th October 1993 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure B to this petition. The order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition appears to have come to the notice of the concerned officer of the State Government. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was contemplated. Thereupon a show-cause notice came to be issued on 20th July 1995 calling upon the petitioner to show cause why the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition should not be revised. Its copy is at Annexure C to this petition. Simultaneously with it an order of interim direction came to be issued on the very same day directing the petitioner to maintain status quo with respect to the subject-matter of this petition. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the legality and validity of the show-cause notice at Annexure C to this petition as also the interim direction at Annexure D to this petition.

3. It becomes clear from the material on record that the revisional powers under sec. 34 of the Act are sought to be exercised after the order at Annexure A to

this petition has been affirmed in appeal by the appellate order at Annexure B to this petition. It cannot simply be done in view of the relevant provisions contained in sec. 34 of the Act. This Court had an occasion to examine the scope of the revisional powers under sec. 34 of the Act after the appellate order came to be passed. In its ruling in the case of Jagdishbhai Nagarbhai Patel v. The State of Gujarat reported in 1996(2) 37(2) G.L.R. 499, this Court has held that no revisional powers under sec. 34 of the Act can be exercised if the order passed by the Competent Authority has been carried in appeal under sec. 33 of the Act. Sitting as a single Judge, the aforesaid ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. The aforesaid ruling of this Court provides a complete answer to the contrary submission urged before me by learned Assistant Government Pleader Shri Uraizee for the respondents.

4. In view of my aforesaid discussion, I am of the opinion that the impugned show-cause notice at Annexure C to this petition as also the interim direction issued by the order at Annexure D to this petition cannot be sustained in law. They have to be quashed and set aside.

5. In the result, this petition is accepted. The show-cause notice issued by and on behalf of the State Government on 20th July 1995 at Annexure C to this petition together with the order of interim direction of the same date at Annexure D to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
